

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

**SILVER STAR DEVELOPMENT
COMPANY, INC., a Washington
corporation,**

Appellant,

v.

**ROBERT E. MANLY and
ALEXANDRA MANLY, husband and
wife; and LORENZ ALLEMANDI and
JANE DOE ALLEMANDI, husband
and wife,**

Respondents,

**SCHEE-RANIUM MINES, INC., a
Washington corporation,**

Defendant.

No. 27950-2-III

Division Three

UNPUBLISHED OPINION

Kulik, C.J. — On August 9, 2006, Okanogan County (County) filed a notice and summons for tax foreclosure of properties owned by Silver Star Development Company, Inc. The legal description on one piece of property stated that the property was in “Range 23” when the property was actually in “Range 25.” The question here is whether a

person of ordinary intelligence could locate the property from the information provided in the foreclosure proceedings.

We conclude that taking all of the circumstances into account, a person of ordinary intelligence could identify the described property with reasonable certainty. Accordingly, we affirm the trial court's grant of summary judgment in favor of the purchasers.

FACTS

Silver Star failed to pay its real estate taxes for the years 2003 through 2006. Okanogan County mailed annual real estate tax statements to Silver Star at P.O. Box 696, Ocean Shores, Washington 98569. Silver Star paid taxes during the years 2001 through 2002 after statements had been sent to the same address. The County mailed notices that identified four properties by the County assessor's tax parcel number, the taxpayer, Silver Star Development Co., and the acreage. Lot 11, tax parcel number 4025232004, is at issue here.

On August 9, 2006, the County filed a notice of application for judgment of foreclosure and summons for these properties. The correct legal description is:

Lots 17, 2, 21, and 11 in Section 23, and all mineral rights pertaining to
Lots 8 and 9 in Section 13 and Lot 7 in Section 14, all in Township 40
North, *Range* 25 E. W. M.

Clerk's Papers (CP) at 56 (emphasis added). However, the title report used Range 23

instead of Range 25 in the legal description:

Government Lot 11 of Section 23, Township 40 North, *Range 23* E.W.M.,
Okanogan County, Washington.

CP at 53 (emphasis added). According to the declaration of the County treasurer, Leah McCormack, the range number for the other three properties and

all the documentation attached to the title report references “Range 25”
including the EPA^[1] lien.

CP at 38. The EPA lien that was attached to Ms. McCormack’s declaration identified the
properties as:

LOTS 17, 2, 21 and 11 in Section 23, all in Township 40 North, Range 25,
E.W.M., Okanogan County, Washington.

CP at 58.

The County published the notice of foreclosure with the incorrect range number
for Lot 11 in a newspaper. The County obtained a judgment on default and order of sale
that described the property but incorrectly identified it as located in Range 23 rather than
Range 25. The title report, publication, and judgment each included this error, but they
also included the correct tax parcel number, 4025232004, and the correct owner, Silver
Star.

¹ Environmental Protection Agency.

The County sold the property by auction on December 8, 2006, to Robert Manly and Schee-Ranium.² The handout at the auction contained Range 23 in the description of the property, but also contained the correct tax parcel number and acreage. Walter Oikari was present at the sale and made no objection. An uncontroverted declaration states that Mr. Oikari was the director and “resident agent” for Silver Star. CP at 93. The treasurer then recorded the deed containing the incorrect range number. When the error was brought to the attention of the treasurer’s office, it corrected the deed by crossing out the “23” after the word “Range” and writing in “25.” The deed was then re-recorded.

Silver Star requested the excess from the tax foreclosure sales on the other pieces of property. Mr. Oikari filled out the applications for foreclosure excess and signed the hold harmless agreements on behalf of Silver Star. The County paid Silver Star \$74,863.67.

In May 2008, Silver Star filed this action, seeking to have the tax foreclosure sale on the disputed property declared void, contending that the trial court lacked jurisdiction over the property. The parties filed cross-motions for summary judgment. The court granted summary judgment in favor of the purchasers. Silver Star appeals.

² One of the purchasers, Schee-Ranium Mines, Inc., sold its interest in the property to Lorenz Allemandi. Schee-Ranium was later dismissed from this lawsuit.

ANALYSIS

We review an order on summary judgment de novo, performing the same inquiry as the trial court. *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

This court considers the facts, and reasonable inferences from the facts, in the light most favorable to the nonmoving party. Summary judgment is appropriate where the “pleadings, affidavits, and depositions establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300-01, 45 P.3d 1068 (2002); *see* CR 56(c).

A tax foreclosure action by a county is a proceeding in rem, and jurisdiction over the res must be clearly established. Certain jurisdictional requirements must be met or the sale is void. *In re Foreclosure of Liens*, 117 Wn.2d 77, 84-85, 811 P.2d 945 (1991). “[T]o divest an owner’s title through a tax foreclosure, the property must be identified in the proceedings and described with reasonable certainty, so that a person of ordinary intelligence, from an examination of the foreclosure proceedings, could locate the property sought to be foreclosed.” *Id.* at 86 (quoting *Napier v. Runkel*, 9 Wn.2d 246, 263, 114 P.2d 534 (1941)). “If the description affords an intelligent means of identifying the property and does not mislead, it is sufficient.” *Wenatchee Reclamation Dist. v. Mustell*, 102 Wn.2d 721, 727, 684 P.2d 1275 (1984). To determine if a property

description is sufficient, “the description should be liberally construed and extrinsic evidence may be consulted.” *Foreclosure of Liens*, 117 Wn.2d at 87.

The parties agree that Range 23 instead of Range 25 was used in the notice and summons, the title report, and in the notice published in the newspaper. The parties also agree that the correct tax parcel number was used throughout the process. The parties do not dispute that they knew which piece of property was sold at the auction. And Silver Star did not object at the sale to the property description or the sale of the property. Silver Star’s other three pieces of property listed together in the foreclosure proceeding showed Range 25, the correct range. Several documents also contained Range 25: the previous deed,³ the EPA lien,⁴ the notice published for another lot owned by Silver Star showing Range 25,⁵ and the judgment on default and order of sale showing three lots and a mining claim with Range 25.⁶

Mr. Allemandi, one of the purchasers, explained that in tax parcel 4025232004, “[t]he ‘40’ stands for Township 40. ‘25’ stands for the Range. ‘23’ stands for the

³ CP at 56.

⁴ CP at 58.

⁵ CP at 111.

⁶ CP at 62-73.

Section and ‘2004’ stands for the particular parcel located therein for assessor’s taxing and valuation purposes.” Resp’t Allemandi’s Br. at 9.

Here, the trial court found that a person of ordinary intelligence could locate the subject property. We agree that the property description, liberally construed together with the additional extrinsic evidence, is sufficient for a person of ordinary intelligence to locate the property.

Silver Star next contends that the Okanogan County Treasurer’s Office had no authority to change the range number on the deed. In the foreclosure proceeding, the trial court entered a judgment that required the sale of real property. The County treasurer executed a deed to the property as described in the judgment including Range 23. Later, the County treasurer’s office corrected the deed so that the legal description read: “Government Lot 11 of Section 23, Township 40 North, Range 25 E.W.M., Okanogan County, Washington.” CP at 75. The treasurer unilaterally corrected the deed by changing the legal description of the property from the description contained in the judgment.

Relying on *Matthews v. Morrison*, 195 Wash. 288, 80 P.2d 856 (1938), Silver Star contends that the treasurer had no authority to correct a deed. In *Matthews*, the court concluded that “[t]he treasurer was not vested with authority to give a deed to property

other than as described in the foreclosure proceeding and decree.” *Id.* at 292.

Mr. Allemandi relies on *Halbert v. Forney*, 88 Wn. App. 669, 945 P.2d 1137 (1997). *Halbert* holds that “[r]eformation is available, however, in circumstances where the inadequate description resulted from a scrivener’s error or because of a mutual mistake.” *Id.* at 673. However, in *Halbert*, the court was asked to reform an earnest money agreement. Here, the treasurer changed a legal description used during a foreclosure proceeding and that was also contained in the judgment. The treasurer lacked the authority to change the legal description without an appropriate court order. We therefore remand to the trial court for an order directing the treasurer to correct the error in the legal description in the deed by changing “Range 23” to “Range 25.”

In summary, we affirm the trial court’s grant of summary judgment to the purchasers and remand to the trial court for an order correcting the legal description in the deed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

No. 27950-2-III
Silver Star Dev. Co. v. Manly

Kulik, C.J.

WE CONCUR:

Brown, J.

Korsmo, J.